



TRAFFORD
COUNCIL

**Council Response to Inspector's Matters
Arising from Hearing Session 9 -
Policy L8**

11th March 2011

Introduction

At Hearing Session 9 of the Trafford Core Strategy Examination, the Inspector suggested that further consideration should be given to changes to Policy L8 for Planning Obligations as set out below:

1. For clarity, transparency and to provide policy hooks for the draft Planning Obligations SPD should the following matters also be referred to in the text of policy L8:
 - The types of development to which the policy refers;
 - How contributions will be collected with reference to the Trafford Developer Contribution Thresholds and the Negotiated Element;
 - How pooled contributions will be used;
 - How the collection of pooled contributions relate to the CIL tests
 - Monitoring the use of and the refunding of any unspent contributions;
 - The approach towards maintenance payments and overage, and
 - Clarity that viability considerations will be taken into account to ensure that 'tariffs' are realistically set and regularly reviewed so as not to thwart delivery, and that viability will also be taken into account on a site-by-site basis?
2. Paragraph 17.8 is negatively worded. Should it be given to re-wording it more positively?
3. Any other changes discussed and suggested by the Council.

Council's Response

In response to Inspector's point 1, the Council agrees that the text of Policy L8 should be revised and expanded to refer to all of the issues identified in the 7 bullet points. The additions to the policy that are required are set out below.

In response to Inspector's point 2, the Council agrees that paragraph 17.8 should be worded more positively to try and seek a solution to the circumstances where developer contributions are being reduced.

In response to Inspector's point 3, no further changes are considered to be necessary.

The following proposed changes to the policy will be added to the Schedule of Proposed Changes (CD 12.4) to this effect at **S300.35**.

L8 - PLANNING OBLIGATIONS

- 17.1 Planning obligations are an established and valuable mechanism for bringing development in line with policies and proposals contained in relevant national and local planning policies.

POLICY L8: PLANNING OBLIGATIONS

- L8.1 In relation to proposed development that would, if implemented, create a need for a particular facility or generate specific adverse impacts that cannot be provided for, or mitigated against through the use of planning conditions, the Council will seek to negotiate appropriate planning obligation(s) to make the development acceptable and sustainable.

- ~~L8.2~~ In accordance with Circular 5/2005, [the Community Infrastructure Levy Regulations 2010](#), policies in this Plan and the Council's Local Infrastructure Plan, the Council will seek ~~Planning Obligations for developer contributions towards~~ the delivery of environmental, economic and social infrastructure. ~~The nature and level of contributions will be established on a site by site basis, relating to a specific development proposal. These may include contribution(s) towards affordable housing; open space, sport and /or recreation; green infrastructure; highway and public transport schemes; measures to combat climate change; the reduction of inequalities and/or; the provision of new community and/or cultural facilities.~~ A planning obligation can only be applied if it meets all of three statutory tests:

1. The obligation is **necessary** to make the development acceptable in planning terms;
2. The obligation is **directly related** to the development;
3. The obligation is **fairly and reasonably related in scale and kind** to the development.

- L8.3 Contributions will be sought for all new development (including mezzanines), redevelopment, and changes of use. The nature and level of contributions will be established on a site by site basis, relating to the type and size of the development proposal. The Council's approach to planning obligations is based on two elements: the 'Trafford Developer Contribution' (i.e. the 'Required Element'), to ensure a proposal is acceptable in planning terms, and a bespoke 'Negotiated Element' which will only be applied on a case-by-case basis where there is a need to address any specific impacts that are not covered by the Trafford Developer Contribution. The Trafford Developer Contribution is a formula-based standard charge which is calculated on a dwelling size (number of bedrooms) or gross internal area (sqm) basis. It reflects the calculated impact of different types of development on different planning obligation matters.

- L8.4 The following list sets out what the Council will seek contributions towards through the Trafford Developer Contribution ("TDC"). This list is not definitive and in the future the Council may expand the list of contributions included in the TDC:

- Affordable Housing;
- Highways infrastructure;
- Sustainable transport schemes, including bus, tram, rail, pedestrian and cycle schemes;
- Measures to reduce the impact of climate change;
- Specific Green Infrastructure, such as tree planting;

- Spatial Green Infrastructure, such as parks, play areas and outdoor sports facilities;
 - Indoor sports facilities, including swimming pools and gyms;
 - Education facilities; and
 - Health facilities;
- L8.5 The following list illustrates likely contributions under the Negotiated Element, but is not exhaustive:
- Reducing Inequalities;
 - Community facilities;
 - Allotments and Cemeteries;
 - Public art;
- L8.6 Contributions will be principally delivered through 'Section 106 Agreements'. There will be a presumption in favour of the on-site provision of benefits sought by planning obligations and the Council will normally expect the developer to carry out the works. However, where it is not possible or practical to provide these benefits on-site, or where a development is required to contribute towards strategic infrastructure or facilities, a financial contribution will be sought towards the provision of these benefits offsite. The collected monies will form a pool for each specific contribution which will be used for delivery of the infrastructure needed to offset the impacts of development. The Council's governance framework for implementing planning obligations will provide safeguards to ensure that financial contributions are spent in accordance with the 3 statutory tests set out above. The Council will pool contributions over the 2011 -2026 period to ensure that the delivery and management of long term infrastructure integral to the future sustainability of the borough is not undermined.
- L8.7 Contributions towards the maintenance of new facilities are identified under some of the individual contributions (e.g. the cost for Specific Green Infrastructure includes a provision for the care and maintenance of new trees). However, the Council or other organisations have a statutory responsibility to maintain some types of infrastructure, such as adopted highways, and so contributions towards the maintenance of these cannot be collected. For all other infrastructure, where the developer and the Council agree to transfer maintenance and management liabilities to the Council or other organisations, a commuted maintenance sum will be required as a Negotiated Element of a Section 106 agreement.
- L8.8 Contributions remaining unspent at the end of a time period specified in the Section 106 agreement will, on request, be returned to the payee along with any interest accrued based on the investment returns achieved by the Council. Given that the tariff contributes to infrastructure needs which can take a long time to deliver, the default period will be 15 years from the date of the agreement, although this may vary depending on the precise nature of the obligation.
- L8.9 Any S106 Agreement will include provisions for both overage and review mechanism(s). If the development is not completed within 3 years of the date of the planning permission, a further consideration of viability will be carried out at that stage (and every 3 years thereafter) for the purposes of determining whether the level of contribution should increase for the balance of the development still to be completed. In order to explore phased payments and/or a clawback mechanism, it will be necessary to use a cash flow model to explore the range of options and to measure the relative impacts of different potential solutions on project viability.

L8.10 The Council acknowledges that, in certain circumstances, a development may not be able to address all of the required planning obligations without the scheme becoming economically unviable. On these occasions, the Council will engage with developers on a site-by-site basis to consider whether contributions should be reduced in order to make development viable.

L8.11 The monitoring and management of planning obligations will be undertaken regularly to ensure that all obligations entered into are complied with on the part of both the developer and the Council, and that all financial contributions are spent in accordance with the s106 Agreement. The Trafford Developer Contribution system will be closely monitored and updated as necessary, having regard to its overall effectiveness, macro and local economic conditions, development viability, the emerging national and local policy and financial context, best practice, and the infrastructure delivery requirements of the borough.

L8.12 Further guidance on the Trafford Developer Contribution system and how it applies to specific localities and the likely quantum of contributions is provided in an associated Supplementary Planning Document.

~~and provided either as:~~

- ~~● Contributions “in kind”/on site, i.e. that the developer builds or provides directly the facility necessary to fulfil the obligation; or~~
- ~~● As a financial payment(s) or as off site improvements where for example:

 - ~~○ An alternative organisation is better placed to provide the facility;~~
 - ~~○ Works are required off-site to ensure that the development meets policy requirements or to mitigate against specific or adverse impacts of the development and an alternative body/organisation will be required to carry out works;~~
 - ~~○ The facility is being funded by more than one developer;~~
 - ~~○ The contribution is in the form of a maintenance payment and the body carrying out the maintenance is not the developer; or~~
 - ~~○ The developer possesses the skills and expertise to provide part of the infrastructure themselves, but the remainder needs to be provided by an alternative organisation.~~~~

~~In accordance with the Community Infrastructure Levy Regulations 2010 and Circular 5/2005, associated Supplementary Planning Document(s) will provide further guidance on the application of contributions to specific localities and likely quantum of contributions. Guidance will also be provided in the SPD on the methodology of applying considerations relating to the economic viability of schemes, based on the Strategic and Place Objectives set out in this Plan.~~

IMPLEMENTATION

Implementation Mechanisms

Implementation will principally be through the planning application decision making process.

Delivery Agent

The delivery agent will be the private sector.

Timescales

This will be ongoing throughout the Plan period.

Funding

Funding will be through S106 contributions.

Justification

- 17.2 In order to make development acceptable and bring it into line with the objectives of sustainable development it is reasonable to seek planning contributions where a development should contribute to specific needs e.g. affordable housing or where developments have an adverse impact on local infrastructure, services and/or local amenities. In this way the Council is able to ensure that development proposals contribute, appropriately, to the provision of community infrastructure necessary to help achieve the sustainable community development and environmental improvement objectives of the Sustainable Community Strategy and the Core Strategy, including tackling climate change.
- 17.3 The Council already has a number of supplementary planning documents which detail arrangements for planning obligations for affordable housing, informal children's playing space/outdoor sports facilities, Red Rose Forest and highway and public transport scheme provision. However it will be necessary for new development to provide the necessary level of infrastructure as detailed in the Council's Local Infrastructure Plan and those associated with the climate change agenda.
- 17.4 Government guidance makes it clear that developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development. Although the effect of the infrastructure investment may be to confer some wider benefit on the community, the payments should be directly related in scale to the impact which the proposed development will make.
- 17.5 Securing such obligations will help to ensure that the site specific impacts of development proposals on the area surrounding the intended development site are properly mitigated by actions wholly funded and put in place by prospective developer(s) to make the development acceptable in physical planning and operational terms.
- 17.6 In relation to affordable housing, Policy L2 provides developers with more guidance on the level and type of planning obligations being sought by the Council. These policies have been informed by the Housing Market Assessment, the Housing Strategy and the Economic Viability Study.
- 17.7 The Council's Economic Viability study made an allowance for all planning obligations currently sought through the Revised UDP Adopted June 2006, before

applying varied affordable housing contribution levels. The outcomes of this study informed Policy L2 and will be used in the determination of individual planning applications. In cases where site specific issues of viability arise the Council will consider whether it is appropriate to agree a reduction in the total value of the contributions required for the proposed development, (whether or not such reduction is subject to an overage provision), or a phasing of the payments. The Council will either reduce all contributions payable pro rata or reduce/delete specific contributions to ensure that a larger portion of the total contribution received can be applied in accordance with an appropriate prioritisation for that particular development based ~~in~~ on the objectives of this Plan. Further guidance on this is provided in the accompanying SPD.

- 17.8 It may not always be appropriate to agree to reduce the total amount of contributions payable where there are issues of viability relating to a specific development. Such a situation would arise, for example, where a developer seeks a reduction in the level of on-site affordable housing required to be provided, but to reduce the level of provision would prejudice the deliverability of affordable housing as required by this Plan. In such circumstances, the Council will engage with the developer at the earliest opportunity to try and agree an appropriate contribution or explore alternative means of delivering the plan objectives. ~~it may be appropriate to refuse the application if the required levels of contribution(s) would not otherwise be provided, on the basis that to delay such development until there is an improvement in the economic climate would mean that the maximum benefit could be secured through a development at a later date.~~
- 17.9 The SA acknowledges that securing the provision of public transport improvements will ensure the maximum positive outcome for SA Objectives E1 “Reduce the effect of traffic on the environment”; E3 “Reduce contributions to climate change”, E8 “Protect and improve air quality” and, EC5 “Improve the social and environmental performance of the economy”.
- 17.10 Community facilities could provide new education or health facilities to reduce locally identified inequalities, or for the promotion of community cohesion/wellbeing within a neighbourhood through the provision of a “community hall” for example. The specific requirements for developments will be judged on a site by site basis, based on the level of identified adverse impact that the development would have on local infrastructure, services and/or local amenities.
- 17.11 Planning obligations could be used to reduce inequalities by, for example, securing training opportunities in the construction trades during the development period and for other permanent opportunities created by development. The SA considers that such action would ensure the maximum positive outcome for SA Objective EC2 “Reducing disparities by releasing the potential of all residents particularly in areas of disadvantage”.
- 17.12 The Community Infrastructure Levy (CIL) Regulations 2010 came into effect on 6 April 2010. These empower local authorities to charge a levy on most types of new development. A charging schedule setting out CIL rates will be produced in due course and used alongside planning contributions to help fund the provision of infrastructure needed to support development in the Borough and make it acceptable and sustainable. Trafford Council will amend its developer contributions regime, as and when new legislation, guidance and regulations are issued.

Which Objective(s) delivered by this Strategic Location/Policy	Reference Number(s)
Key Objective(s) of the SCS	SE7 SC3 PE1, PE3, PE4, PE6, PE7 BH2, BH3 HQ8, HQ9
Strategic Objective(s)	SO1, SO2, SO3, SO4, SO5, SO6 & SO7
Place Objective(s)	TPO5, TPO13, TPO14, TPO15, TPO18 OTO5, OTO14, OTO15, OTO17, OTO19, OTO20, OTO21, OTO24 STO5, STO12, STO13, STO14, STO18, STO21 URO5, URO10, URO11, URO12, URO13, URO16 MVO4, MVO5, MVO8, MVO12, MO13 SAO9, SAO15, SAO16, SAO17, SAO19, SAO22 ALO10, ALO16, ALO18, ALO19, ALO20, ALO21, ALO22, ALO24, ALO27 RCO5, RCO6, RCO8, RCO9, RCO10 PAO12, PAO13, PAO14, PAO15, PAO16, PAO17, PAO20 CAO7, CAO11, CAO16, CAO17, CAO18, CAO19, CAO20, CAO25